IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1289 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BECHARBHAI S PRAJAPATI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
Mr.L.R.Pujari,A.P.P. for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 24/08/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 5-11-1993 passed by the learned Special Judge,

Bhavnagar, in Special Case no.9 of 1991 whereby the appellant-Becharbhai Saburbhai Prajapati was convicted and sentenced to suffer R.I. for one year in respect of offence punishable under Section 161, IPC and R.I. for one year and fine of Rs.1500/-, in default, R.I. for one year in respect of offence punishable under Section 5(2) of the Prevention of Corruption Act, however, both the sentences were ordered to run concurrently. It may be noted here that by the said judgment, the learned Special Judge had acquitted the accused nos.2 to 4 of all the charges levelled against them.

2. Briefly stated, the case of the prosecution is that on 12-12-1990, one Luxury Bus bearing no .GTS 9919 was hired by Ramnikdas Hargovindas from Bharat Travels Company for carrying a marriage party from Mahuva to Selana. According to the complainant-Ghelabhai Jasabhai, the Mehtaji of Bharat Travels who was present in the bus, at around 6.00 or 6.15 a.m. of that day when the bus reached Aasarana Chokadi, the appellant-accused stopped the luxury bus and demanded the documents relating to the luxury bus whereupon the complainant had shown the permit and

other papers, however, the police staff kept these papers with them. The appellant-accused, then demanded Rs.250/- in the name of entry fee. The complainant, then requested the appellant-accused who was P.S.I. at the relevant time to let them go as the bus was carrying a marriage party, however, the appellant-accused demanded Rs.250/-to which the complainant refused as instructed by the owner of the bus. It is further the case of the prosecution that the appellant-accused then told the complainant that Rs.225/- be paid and the papers be collected from that spot where the bus was intercepted by 10.00 O'clock, and in case the complainant is late, the amount be paid at Khuntvada Police Station So saying, the appellant-accused issued a receipt in token of having taken away the permit and other papers which was received by Bhagwanbhai Ranchhodbhai, the driver of the luxury bus. The driver was then allowed to run the bus towards village Selana. The complainant thereafter, returned to Mahuva and narrated the incident to the owner/proprietor of the luxury bus. On hearing this, the owner of the luxury bus was against giving any illegal gratification as all the documents relating to the luxury bus was genuine. Therefore, the owner decided to approach the

Anti Corruption Bureau, Bhavnagar, Accordingly, the complainant, the owner of the luxury bus and one Ramjibhai who happens to be the elder brother of the owner of the luxury bus went to the Office of the Anti Corruption Bureau, Bhavnagar, met Mr. Bhatt, P.I of Anti Corruption Bureau, Bhavnagar, apprised him of the matter and lodged the complaint. It is further the case of the prosecution that two Panchas were called and they were told the purpose for which they have been called, the complaint was read over to them and they agreed to be Panch Witnesses. They were also explained the purpose and use of anthracene powder. Thereafter, the complainant gave two currency notes in the denomination of Rs.100/-each and one currency note in the denomination of Rs.50/- aggregating Rs.250/-. These currency notes as also the hands of the complainant, Panchas and other staff were observed in ordinary light and nothing significant appeared. Thereafter, a bottle containing anthracene powder was taken from the cupboard, some anthracene powder was put in a blank paper, these currency notes were smeared with anthracene powder and when they were again observed in ordinary light no visible marks were seen. These currency notes were again tested

under ultra-violet lamp and glowing marks of bluish powder were seen. These currency notes were then put into the shirt pocket of the complainant after ensuring that the shirt pocket was empty. It was explained to the complainant that in ordinary light the marks of anthracene powder will not appear but only under ultra violet lamp the bluish powder marks of anthracene powder can be seen. The anthracene powder that remained in the blank paper was then put back into the bottle, the bottle was placed in the cupboard and locked. The blank paper was burnt and destroyed. The complainant was instructed not to touch the currency notes put in his pocket except for the purpose of giving them to the appellant-accused and that these currency notes should be given to none other than the appellant-accused. With these instructions the constable washed his hands and made sure that there were no marks of anthracene powder by viewing under ultra violet lamp. The preliminary Panchnama Exh.14 was drawn. The raiding party then left for Khuntvada - some persons went by Ambassador car while the others went by Jeep. The complainant was instructed to give signal as soon as the amount is demanded and accepted by putting his hands on his head and Panch

no.1-Hemantkumar Jayantilal Bharu was instructed to remain in the company of the complainant. In this manner, with a view to apprehend the appellant-accused red handed while demanding and accepting the illegal gratification from the complainant, the trap was arranged. It is further the case of the prosecution that they reached Khuntvada at 5.30 p.m. and on instructions by P.I. Mr.Bhatt, Ramjibhai Ukabhai, the elder brother of the owner of the luxury bus went to Khuntvada Police Station to inquire whether the P.S.I. was present or not, however, since the P.S.I. was not available at the Police Station, they decided to wait for an hour. It is alleged that within an hour the Police Jeep went towards the Police Station, and therefore, Panch no.1 along with the complainant was sent to the Police Station. They went to the Police Station on foot and so did the others who followed. The complainant went up the first floor where he met the appellant-accused (P.S.I.) who was sitting in the Chamber while Panch no.1 who accompanied the complainant waited at the door of the P.S.I's Chamber. The complainant requested to handover the papers of the luxury bus, but the appellant-accused asked whether he (complainant) had brought the money i.e. the illegal

gratification. The complainant suggested that some lesser amount than Rs.250/- be accepted to which the appellant-accused replied that Rs.200/- be given. Accordingly, the complainant handed over the tainted currency notes of Rs.200/- to the appellant-accused who accepted the same by his left hand, put it in his right hand and then into his right hand trouser pocket. The appellant-accused then gave the portfolio that was in the cupboard. In the meanwhile, the complainant had kept the remaining currency note of Rs.50/- in his pocket. The appellant-accused then demanded the receipt which was given at the time of interception at the spot, but the complainant told that the receipt was with the driver. It is alleged that, at that time, Panch no.1 was at a distance of five feet from the Chamber of the appellant-accused and heard the conversation between the complainant and the appellant-accused. It is also alleged that the complainant, thereafter , came out near the staircase and gave the preplanned signal to the ACB personnel who rushed to the Chamber of the appellant-accused in the company of Panch no.2 Ishwarlal Girdharlal Chauhan. The ACB Inspector revealed his identity by showing his card, took away the revolver from the

appellant-accused (P.S.I.). At that time, the appellant-accused got frightened and took out the said tainted currency notes from his trouser pocket and kept them in his fist. The P.I. ACB, Bhavnagar then apprehended the appellant of having demanded and accepted a sum of Rs.200/- from the complainant for showing him favour by allowing the luxury bus to go to the destination and the appellant-accused was asked to place his hands on the table and the tainted currency notes were recovered from the appellant-accused. Thereafter, the test of anthracene powder was carried out of the hands of the raiding party by viewing their hands under ultra violet lamp and no marks of anthracene power was found. Similar test was carried out of the hands of the complainant, the appellant-accused and trousers of appellant-accused and presence of anthracene powder was noticed. It is further alleged that the recovered currency notes of Rs.200/- were compared with the numbers and denominations of the currency notes mentioned in the pre-trap Panchnama and the same having tallied in toto were seized. The appellant-accused was taken into custody. The tainted currency note of Rs.50/-that remained in the pocket of the complainant was also compared with the

number and denomination mentioned in the pre-trap Panchnama and the same also tallied. Thereafter, a detailed second part of the Panchnama was drawn in presence of the Panchas, muddammal currency notes, trouser worn by the appellant-accused etc. were attached. It is further the case of the prosecution that on the next day, further statement of complainant was recorded and at that time he produced the receipt issued by the appellant-accused. The statements of witnesses were recorded and the sanction for prosecution in respect of the appellant-accused was obtained from Mr. Brar, Junagadh.

3. The case was investigated by the Investigating Officer Mr. Bhatt who at the conclusion of the investigation, charge-sheeted the appellant-accused for the offence punishable under Sections 7, 12, 13(1)(d) of the Prevention of Corruption Act. The learned Special Judge framed charge Exh.5 against the appellant-accused for the offence punishable under Sections 7, 12 and 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act. The charge was read over and explained to the appellant-accused, who pleaded not guilty to the same and claimed to

be tried. Therefore, the prosecution examined : (1) PW 1 Ghelabhai Jasabhai at Exh.11 (complainant), (2) PW 2 Hemantkumar Jayantibhai Bharu at Exh.14 (Panch no.1), (3) PW 3 Bhagwanbhai Ranchhodbhai, driver of the luxury bus at Exh.18 and (4)PW 4 Suryakant Ambalal Bhatt at Exh.20 and also produced documentary evidence, such as complaint lodged by PW 1 Ghelabhai Jasabhai, sanction to prosoecute the appellant-accused, panchnama, receipt, a chit exh.13 etc. to prove its case against the appellant-accused. After recording of the evidence of prosecution witnesses was over, the learned Special Judge on the next day recorded the further statement of the appellant-accused under Section 313 of the Code of Criminal Procedure. In his further statement the appellant-accused denied the charges levelled against him and he claimed that he has been falsely implicated in the case in order to pressurize the police, since one Natubhai Dabhi, M.L.A. of Talaja is a partner of and has his share in Bharat Travels Co. from where the luxury bus was hired.

4. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution both oral as well

as documentary, the learned Judge of the trial Court held that the prosecution has established beyond reasonable doubt that the appellant-accused did demand illegal gratification of Rs.200/- from the complainant on 12-12-1990, that the complainant did pay the same to the appellant-accused, that the appellant did accept the said bribe money from the complainant in the Chamber of the appellant-accused, and therefore, held the appellant-accused guilty of offence with which he was charged and passed the judgment and order of conviction and sentence as stated in para-1 of this judgment, which is the subject matter of challenge in the present appeal.

5. I have heard the learned Counsel Mr. K.J.Shethna for the appellant-original accused no.1 as well as the learned A.P.P. Mr. L.R.Pujari ,for the respondent-State at length and in great details and have also perused the record with due care and caution.

6. Learned Counsel for the appellant-accused has while taking me through the whole judgment of the trial Court has raised several contentions. He firstly contended that there are major contradictions in the evidence of the

complainant-Jasabhai. According to the learned Counsel, the complainant in his evidence had not made a positive statement that the appellant-accused has demanded Rs.250/-. According to him,even PW 3 Bhagwanbhai has not stated that the appellant-accused has initially demanded Rs.250/-but he had merely deposed that the P.S.I. told him to show the papers of the luxury bus. The learned Counsel further stated that the stand taken by the prosecution that the licence having been handed over to the police is not believable as the licence was with the driver and not in the portfolio. The learned Counsel also contended that Exh.13 which is a chit for contract is a fabricated document as normally the same would find place with the other documents in the luxury bus. The date of contract being 12-12-1990 is also disputed by the learned Counsel as, according to him, it was 11-12-1990. The learned Counsel next contended that the prosecution has conveniently avoided examining Ramjibhai, the elder brother of the owner of the bus though Ramjibhai went with the complainant to the ACB Office and also accompanied the raiding party to Khuntvada Police Station. The learned Counsel for the appellant-accused next contended that there

was no reason for the complainant to come to the staircase after the acceptance of the amount by the appellant-accused. It was next contended by the learned Counsel that the Panch no.1 could not see anything or hear the conversation between the complainant and the appellant-accused from the place where he was standing. According to the learned Counsel, Panch no.1 is an interested witness and his evidence does not inspire confidence. The learned Counsel next contended that there is inconsistency in the evidence of Investigating Officer and the Panch Witness as to whether currency notes were recovered from the appellant-accused in the first outer room or in the Chamber of the appellant-accused. According to the learned Counsel no powder marks were visible on the cupboard and also on table torch etc. It is the submission of the learned Counsel that if Panch no.1 recovered the currency notes from the appellant-accused in the outer room then there would be marks of anthracene powder on his hands. According to the learned Counsel when there are such major contradictions the whole prosecution story is not believable. The learned Counsel next contended that there is no evidence to the effect as to when the raiding party reached Khuntvada

Police Station and how they reached Mahuva or Bhavnagar. It was also contended by the learned Counsel that the Muddammal currency notes as also the trouser of the appellant-accused were not sealed. The learned Counsel next contended that the evidence of complainant and the case of the prosecution is contradictory inasmuch as to whom the currency notes were to be given. According to the learned Counsel, the currency notes were to be given to P.S.I. and non else, whereas according to the case of prosecution to P.S.I and some other person. The learned Counsel next submitted that according to the complainant, he gave the signal from the staircase while according to Panch no.1, the complainant gave signal from the Chamber itself. It is also the submission of the learned Counsel that there was no light in the Police Station at the relevant time but the complainant has made a statement that he signed the Panchnama. According to the learned Counsel, the Panchwitness had signed the documents and his statement on the next day. The learned Counsel next contended that the prosecution has not examined witnesses who were the 41 passengers in the luxury bus, the police staff, the P.S.O. Of Khuntvada Police Station. Finally, it was contended by

the learned Counsel that there is no demand, payment and acceptance, and therefore, the whole case of prosecution is improbable. It is, therefore, prayed that the appeal be allowed, the judgment and order of conviction passed by the learned Special Judge be set aside and the appellant-accused be acquitted of the offence in question.

7. On the other hand, learned A.P.P. for the respondent-State has submitted that the prosecution has successfully established the case of demand and acceptance of the illegal gratification by the appellant-accused from the complainant through the trustworthy and reliable evidence of the complainant which is fully corrorborated by the testimony of independent Panch witness, the seizure list Exh.21 as well as the complaint It is also the submission of the learned A.P.P. that the sanction to prosecute the appellant-accused which is at Exh.16 is also quite legal and valid. According to the learned A.P.P. The learned Special Judge is perfectly justified in passing the judgment and order of conviction and sentence against the appellant-accused, and therefore, the appeal deserves to be dismissed.

8. It is not in dispute that the appellant-accused is a PSI at Khuntvada Police Station, and as such a Government servant. The sanction to prosecution the present appellant is at Exh.16, however, the validity and legality of the sanction to prosecute has not been challenged, and therefore, it can be said that there is a valid sanction.

9. Now, if we look at the evidence on record, the trial Court has examined certain witnesses. The complainant in his evidence at exh.11 has stated that on the day of the incident i.e. on 12-12-1990 at 5.30 a.m.,he along with a marriage party consisting of 41 passengers boarded the luxury bus bearing no.GTS 9919 from Mahuva to Selana. Bhagwanbhai Ranchhodbhai PW 3 Exh.18 was the driver and one Rustumbhai was the cleaner. When the bus reached Asarana Chokadi, they were intercepted by two to three police constables who were present there with a Police Jeep and asked to stop the bus. On the bus being stopped, the papers relating to the luxury bus were demanded. At that time, the complainant requested to let them go, but the P.S.I. demanded Rs.250/-. The complainant then gave the papers to the P.S.I. who took away the papers and issued a

receipt to the complainant which is on record at Exh.19. The complainant has categorically stated that this receipt bears the signature of the P.S.I. as also the thumb mark of the driver-PW 3. According to the complainant, the licence of the luxury bus was also attached. The complainant was asked to pay Rs.250/- and collect the papers etc.. So saying the bus was permitted to proceed towards Selana. In his testimony, the complainant has further stated that he then contacted the owner at Mahuva and it was decided to approach the Anti Corruption Bureau. Accordingly, the owner of the luxury bus, his elder brother Ramjibhai went to the Office of the ACB, Bhavnagar, and lodged complaint (Exh.12) whereupon two Panchas were called, the complaint was read over to them, they were told the purpose for which they have been called and were also explained the purpose and use of anthracene powder. Thereafter, the complainant gave two currency notes in the denomination of Rs.100/- each and one currency note in the denomination of Rs.50/- aggregating Rs.250/-. These currency notes as also the hands of the complainant, Panchas and other staff were observed in ordinary light and no visible marks of anthracene powder were seen. Thereafter, one Constable

was asked to take out the bottle of anthracene powder from the cupboard. These currency notes were then smeared with anthracene powder and demonstration of anthracene powder was carried out by viewing these notes under ultra violet lamp and visible marks of shining bluish powder was noticed, however, when these currency notes were observed in ordinary light nothing significant appeared. The shirt pocket of the complainant was then emptied and these currency notes were put into it. According to the complainant, it was explained to him that in ordinary light the marks of anthracene powder will not appear but only under ultra violet lamp the bluish shining powder marks of anthracene powder would be visible. It is the say of the complainant that he was then instructed not to touch these notes till it was to be given to the appellant-accused and that it should not be given to any one else. It has also come out in his evidence that the Police Constable then put the remaining anthracene powder in the bottle, burnt the paper on which the anthracene powder was taken, kept back the bottle in the cupboard and washed his hands. The complainant in his testimony has also stated that he was then instructed to give a signal by putting his hands on his

head when the appellant-accused(P.S.I.) accepts the amount. The complainant has also stated that Panch no.1 was instructed to be in the company of the complainant while Panch no.2 was instructed to accompany the raiding party and to be in touch with one another. The complainant has further stated in his evidence that they had left Bhavnagar at 3.00 p.m. i.e. the complainant, Ramjibhai, Mr. Bhatt of ACB, Panch no.1 and two other persons from ACB by an Ambassador car while Panch no.2 and police staff followed the car by Jeep and reached near Khuntvada village at 5.30 p.m. On instructions received from P.I. Mr. Bhatt, Ramjibhai Ukabhai had gone to Khuntvada Police to ascertain whether P.S.I. was present and returned with the news that the P.S.I. was not present. It was then decided by Mr. Bhatt, P.I. to wait for an hour and accordingly all of them waited in the village Khuntvada. Within half an hour they spotted the Police Jeep proceeding towards Khuntvada Police Station. In his testimony the complainant has further stated that, at that time, PI. Mr. Bhatt asked the complainant and Panch no.1 to go to Khuntvada Police Station and accordingly they went there on foot and the others also followed on foot. The complainant and Panch

no.1 went up the first floor and met the P.S.I. in his Chamber while Panch no.1 stood waiting at the door of P.S.I.'s Chamber. The complainant requested to handover the papers of the luxury bus, while the appellant-accused(P.S.I.) enquired whether he (complainant) had brought the money(illegal gratification). The complainant suggested that some lesser amount than Rs.250/- be accepted to which the appellant-accused replied that Rs.200/- be given. Accordingly, the complainant handed over the tainted currency notes of Rs.200/- i.e. two currency notes of the denomination of Rs.100/-each to the appellant who accepted the same by his left hand, got up from his seat and put it in his right hand and then into his right hand trouser pocket. The appellant-accused then took out the papers relating to luxury vehicle from the cupboard and gave the papers to the complainant which was received by him. In the meanwhile, the complainant had kept the remaining tainted currency note of Rs.50/-in his pocket. The appellant-accused then asked for the receipt issued by him and the complainant told him that the receipt is in the vehicle. In his testimony the complainant has categorically stated that, at that time, Panch no.1 was standing at a

distance of 5ft., he (complainant) then went out of the chamber to the staircase and gave the signal by putting his hands on his head. Soon the ACB personnel and the other Panch rushed to the appellant-accused's Chamber. The ACB Officer Mr. Bhatt then disclosed his identity to the appellant-accused who was just coming out of his Chamber by showing his card. Thereupon, the complainant took away the revolver from the appellant-accused (P.S.I.) while the ACB Officer caught-hold of the upper arm of the appellant-accused and saw to it that the tainted currency notes given by the complainant is kept on the table since the appellant-accued had taken these currency notes from his pocket and kept them in his fist. Thus, the tainted currency notes were recovered from the appellant-accused. Panch no.1 then called everybody and examined their hands, under ultra violet lamp, however, the hands of the appellant-accused and the complainant were not examined. There were no visible marks of anthracene powder on the hands of anybody. Thereafter, the currency notes recovered from the appellant-accused, the hands of the appellant-accused, the trouser pocket of the appellant-accused and the hands of the complainant were viewed under ultra violet lamp in

presence of the Panchas and trace of anthracene powder was noticed. The complainant in his evidence has further stated that these currency notes when compared with the numbers and denominations of the currency notes mentioned in the pre-trap Panchnama, the same having tallied in toto, were seized and given to Panch no.1. Even the currency note of the denomination of Rs.50/- which was in the pocket of this witness was recovered for tallying the number and for test under the ultra violet lamp. The number of this currency note also tallied with the number mentioned in the pre-trap Panchnama and when observed under the ultra violet lamp glowing anthracene powder was noticed. The complainant has also stated in his evidence that the name of the P.S.I. was Prajapati. According to the complainant though trace of anthracene powder was found in the pocket of his shirt, the same was not seized as he had stated that he had only one shirt. The complainant has further identified the portfolio and the papers therein to be relating to luxury bus when he says that they were the same which was taken away in the morning by the appellant-accused. According to the complainant, on viewing this portfolio under ultraviolet lamp, traces of anthracene

powder were noticed. The driving licence was not taken away from the porfolio. The porfolio contained RTO permit, papers of insurance etc. He does not know whether the I.O. Mr. Bhatt had given anything after seizing the trousers of the appellant and the currency notes of Rs.200/-. The complainant has further stated that all the investigation was carried out by Mr. Bhatt at Khuntvada Police Station and it was over by 10.30 p.m. He met the driver of the luxuy bus at 11.00 p.m. and took the receipt which was given to him in the morning.The complainant returned to Mahuva in the night itself and narrated the episode to his Sheth. The complainant has deposed that he and his Sheth went to the ACB Office, Bhavnagar on the next day when his detailed statement was recorded. At that time, he had handed over the receipt which was issued to him by PSI. The complainant had identified the driver of the jeep as Parameshvardin.In cross examination, the complainant had not identified the accused nos.2 and 3. He has stated that Rs.250/- was given to him from his office and that he does not know whether there is any entry with regard to this amount in the office. According to the complainant, Jivanbhai Natubhai is a partner in his firm and that he is the

son of M.L.A Natubhai. He has further deposed that a slip/note is kept along with the papers relating to the luxury bus in a portfolio wherein details with regard to departure and return journey of the bus is mentioned and that this note is also helpful for ascertaining and collecting the remaining hire charges. This portfolio is normally kept with the driver. The note Exh.13 dated 12-12-90 in red ink was produced by him at the ACB office, when he went to lodge complaint for the first time, relates to luxuy busno.9919 and is of the handwriting of one Jivanbhai which was given to him by Jivanbhai on the 11th at 9.00 p.m. He did not know whether Jivanbhai had put the date on the slip on the very day on which the slip was given to him. The portfolio containing all the papers relating to luxury bus was taken from the luxury bus and given to the PSI and the PSI had seized the same. The complainant has stated that he does not know as to how the slip came in his possession. The receipt was given by him to the ACB Officer when he went to lodge complaint. He was not aware of the names of the other three accused on that date. The complainant in his evidence has categorically stated that the police are demanding entry fee and the amount would be paid only if

the papers are not proper. According to the complainant Jivanbhai had specifically instructed him not to pay any entry fee if demanded as all the papers relating to the trip are in order. The complainant has further stated that the PSI had demanded the money at the Chokadi of Asrana Village to which he replied that the money will not be given as his Sheth has so instructed him. According to the complainant, upon his request, the PSI had given the receipt relating to the papers of the luxury bus and that he had given these papers to the driver and that he had not received back the papers at any time from the driver. Jivanbhai had shown me this receipt on the next day at 9.00 a.m.. He has also stated that his Sheth had told him that they have to go to ACB Office. He has deposed that this receipt was with Ramjibhai on the 13th, but not with him. According to the evidence of the complainant, Ramjibhai had given this receipt to Mr. Bhatt of ACB at 11.30 a.m. in presence of the complainant and Ramjibhai. The complainant has denied that his complaint was not read over to the Panchas. He has deposed that the Panchas had signed the complaint made by him. The complainant has stated that Ramjibhai had instructed him to seek some

reduction in the amount while sitting in the Ambassador car. At that time ACB officer Mr.Bhatt was beside him. Ramjibhai went to the Police Station and returned within ten minutes and then they started for the raid. He has deposed that the electric supply was restored when the PSI was arrested. He does not know the time when PSI was caught. According to the deposition of the complainant, the currency notes were on the table, but he does not know as to who took out the currency notes from the pocket of the PSI. He has also deposed that there were no marks of powder on the cupboard, as well as on the hands and clothes of the Inspector of ACB when examined under ultra violet lamp. The complainant has denied that the luxury bus was being run without driving licence, permit and proper papers on 12-12-1990. He has also denied that since there were cases against his firm, and therefore, with a view to pressurize the Police Department this complaint is filed. He has also denied the suggestion that Exh.13 is a false and fabricated document.

10. At the outset, it may be stated that the said evidence of the complainant is supported by his own FIR which has

been produced by him at Exh.22. In support of the said evidence, the prosecution also examined PW 2 Hemantkumar Jayantibhai Bharu (Panch no.1) at Exh.14. This witness was at the relevant time serving as a Sales Tax Inspector, Bhavnagar. According to him, he was invited as Panch by the ACB Office, Bhavnagar through his Officer and accordingly, he had gone there on 12-12-90. One Ishwarbhai Gordhanbhai was present there at that time. That the Panchas and the complainant were introduced to one another, FIR was read over to them, their consent to act as Panchas were taken and their signatures were obtained. That, the experiment of anthracene powder was demonstrated. The characteristics of anthracene powder and its use was explained to the complainant and Panchas. He has also deposed that the complainant produced currency notes of Rs.250/- i.e. two currency notes in the denomination of Rs.100/-each and one currency note in the denomination of Rs.50/-. The number and denomination of these notes were mentioned in the Panchnama and after the search of the complainant, his shirt pocket was emptied. Likewise, search of the Panchas and Anti Corruption staff was also carried out. Then the shirt pocket of the

complainant, his hands as well as the hands of all the other persons were observed under ultra violet lamp and no visible marks of anthracene powder was noticed. Thereafter, a bottle of anthracene powder was taken from the cupboard and these currency notes were smeared with anthracene powder by Police Constable Vanrajsinh. These currency notes when observed under ordinary light, nothing significant appeared but when observed under ultra violet lamp glowing bluish powder was noticed. The hands of the said Constable was also viewed under ultra violet lamp and glowing bluish powder was noticed. These currency notes were then put into the shirt pocket of the complainant and he was instructed not to touch them except for the purpose of giving to the PSI. The rest of the anthracene powder was put back into the bottle and was kept in the cupboard and the blank paper used for putting the anthracene powder was burnt and destroyed. The Police Constable Vanrajsinh then washed his hands and his hands were viewed under the ultrao violet lamp and no trace of anthracene powder was seen. This witness i.e. Panch no.1 was then instructed to be in company of the complainant and to hear the conversation between the complainant and the PSI and see

whatever happens. Preliminary Panchnama was drawn which was signed by this witness. Then, the raiding party proceeded to Khuntvada Police Station, the office of the appellant-accused-PSI. at 2.45 a.m. The driver, complainant, Panch no.1 (the witness himself), ACB Inspector Mr. Bhatt and two other persons travelled by ambassador car while PSI Goswami, another Panch and other staff members travelled by jeep. They reached Khuntvada at 6.00 p.m. The driver of the car went to the Police Station and found that the PSI was not present there, and therefore, the raiding party waited. In the meanwhile, they witnessed a jeep proceeding towards Khuntvada Police Station. The raiding party then went towards the Police Station on foot. According to this witness, there was no electric supply at the Police Station till they reached there, the complainant and he (this witness) went upstairs and on seeing the PSI in his Chamber, the complainant conveyed to Panch no.1 that the PSI was the very Officer who took away the papers. The complainant then went into the Chamber of the PSI. This witness waited near the building and heard the conversation between the complainant and the appellant-accused (PSI) and saw what was happening. According to

this witness, he demanded the papers of the luxury bus and the PSI enquired of him whether he had brought the money. The complainant then requested for reduction in the amount and the PSI agreed and suggested that Rs.200/- be given. Thereafter, the complainant took out the currency notes from his shirt pocket and handed over two currency notes in the denomination of Rs.100/- each to the appellant-accused (PSI), which were accepted by the PSI and put them in his right hand trouser pocket. The complainant then demanded the portfolio that was taken by the PSI from the cupboard and given to him. The PSI in turn demanded the receipt that was issued by him in the morning to which the complainant replied that the receipt was in the vehicle. The complainant then gave the pre-planned signal. Thereupon, Panch no.2 and ACB Inspector Mr. Bhatt arrived who disclosed his identity and asked the appellant-accused (PSI) who was coming out of his Chamber not to move. The PSI introduced himself as Becharbhai Prajapati. The revolver of the PSI was taken away. At that time, the PSI took out the currency notes from his trouser pocket and crumbled it in his fist. This witness has also deposed as to how further procedure with anthracene powder was carried out on the currency

notes seized from the appellant-accused, on the hands, trousers, inside portion of the pocket, fingers, palm of the appellant and presence of bluish glowing anthracene powder was noticed. Similar experiment of anthracene powder was also carried out on the hands of the complainant as well as the portfolio and bluish glittering powder was seen. The numbers and denomination of the currency notes recovered tallied with the numbers and denominations of the currency notes mentioned in the Panchnama. The trouser of the PSI was attached which was identified in the Court as belonging to the PSI. The remaining currency note of Rs.50/- from the shirt pocket of the complainant was also attached. The slips bearing the signature of the Panchas when shown to this witness in the witness box, he identified them. All the papers in the portfolio were found to have been signed by the Panchas. This witness also identified the appellant-accused (PSI) as Prajapati. The Panchnama is at exh.15. According to this witness, his statement was recorded on the next day. In cross examination this witness has admitted that on Exh.13 signatures of the Panchas were not there. He does not know the name of the Ambassador car driver and as to how

the name of Ramjibhai is shown in the statement. He does not know where the other members of the raiding party was positioned, however, according to this witness also, they went to the police station on foot. He admits that if the door of the Dela is closed, Police Station or the compound cannot be seen. According to this witness the Chamber has two windows one of which falls on the road while the other is just opposite. He denied the suggestion that from the Chamber, the table of the PSI is 10 ft. away and stated that it is just two to four steps away and near the partition there is a window. He has also denied the suggestion that he cannot hear and see anything that happens in the Chamber of the PSI from where he was positioned but stated that he was able to see the main portion of the table. According to this witness the wireless set was 2 ft. away from his position. He admits that if any signal is given from the staircase then only the persons outside the Dela can see. Persons in the compound can see. This witness has further stated that within one minute of the signal, the raiding party arrived, the PSI had come to the outer room from his Chamber and that he had taken the currency notes from the hands of the PSI Prajapati at that time. The currency notes

when shown to this witness in the Court, he admitted that they were not crumbled. After the Panchnama and completion of the formalities they left the Police Station within five to ten minutes. This witness has admitted that the trouser as well as the portfolio were not sealed. According to this witness, they reached Bhavnagar around 12.30 in the night.

11. Bhagwanbhai the driver of the luxury bus is examined at Exh.19. He has deposed that in the morning his bus was stopped by the PSI. The portfolio was demanded and when the portfolio was shown to the PSI he had kept the same with him. That Metaji told him that PSI was demanding Rs.250/-. This witness had identified the portfolio in the Court . The driver put his thumb mark on the writing mark 10/3 while the PSI signed it. This note was handed over to the driver and at night the driver gave the same to his boss. This witness had admitted that the licence was with him.

12. Mr.Bhatt, ACB Inspector is examined at Exh.20. He has adopted almost similar version as deposed to by the complainant in his evidence at Exh.11 and as such I do not deem it necessary to reiterate the same. Suffice it to say

that the raid was conducted in a proper manner as prescribed under the law.

13. In order to substantiate his arguments, the learned Counsel for the appellant-accused has invited my attention to two judgments rendered by the learned Single Judge of this Court (1) (Coram:C.K.Buch,J.) on 28-6-2007 in Criminal Appeal no.620 of 1990 and (2) Coram: Akshay Mehta,J.) on 18-12-2004 in Criminal Appeal no.575 of 1993, however, on a careful study the facts being quite different cannot be made applicable to the facts of the present case.

14. In the background of the above set of evidence, the following facts emerge –(i) demand, acceptance and recovery of illegal gratification which are the three main ingredients in a trap case stands proved. (ii) The initial demand has been proved through the evidence of the complainant PW 1 Exh.11 which is supported by his FIR Exh.22. It is further supported by the conduct of the complainant as he approached the ACB and filed the FIR. Then he again went there with the bribe money. Then he approached the appellant on the trap day. The fact of initial demand gets further support from the evidence of the complainant on the trap day, when he, met the appellant-

accused in his Chamber, the appellant inquired of him if he had brought bribe money. On this point even the Panch no.1 who happened to hear the conversation between the appellant-accused and the complainant and also saw whatever happened in the Chamber supports the evidence of the complainant. (iii) As regards the demand of bribe money on the date of the trap, there is evidence of complainant, panch no.1, the FIR and Panchnama.. The evidence of consequent recovery of bribe money further supports the case and evidence of pre-trap demand and trap day demand. (iv) The evidence of acceptance can be gathered from the evidence of complainant, FIR and Panchnama. (v) The evidence of recovery of the bribe amount further supports the case and evidence of demand and acceptance. The fact of recovery of bribe money is proved from the records through the evidence of complainant, panch no.1, Investigating Officer, FIR, Panchnama, presence of anthracene powder on the currency notes recovered from the trouser pocket, hands, fingers, palm, inside portion of pocket etc. of the appellant-accused as well as on the portfolio, the numbers of which tallied with the numbers mentioned in the Panchnama. The

evidence that the portfolio containing the papers relating to the luxury bus were handed over to the complainant on the trap day by the appellant-accused lends additional support to the case and evidence of demand, acceptance and recovery of bribe money.

15. Therefore, when the facts of demand, acceptance and recovery have been satisfactorily established beyond any reasonable doubt, then the prosecution has become statutorily entitled to the benefit of the presumption under Section 4(2) of the Act i.e. the prosecution has to be held to have proved that the appellant received the money in question as an illegal gratification which was not his actual remuneration and which he was not entitled to receive. Even considering the amount in question and the year 1990, it cannot be said to be trifle money so as to attract sub-section (3) of Section 4 of the Act. From the oral evidence of the complainant corroborated by the evidence of Panchas, Investigating Officer, Panchnama and FIR the fact that the appellant-accused demanded and accepted illegal gratification stands fortified and strengthened.

16. An attempt has been made by the learned Counsel for the appellant to show that there are major contradictions in

the evidence of the complainant which does not inspire confidene of this Court. On a careful scrutiny of the evidence of the complainant, it reveals that there is no contradiction whatsoever on material points, namely, the date of incident 12-12-90, the time at which the marriage party left from Mahuva, the luxury bus no.9919, the bus being stopped and initial demand of Rs.250/- having been made, the receipt (Exh.19) having been issued against the seizure of papers relating to luxury bus which admittedly bears the signature of the PSI as also the thumb mark of the driver PW 3, the statement made by the complainant that his owner was unwilling to give bribe money and thereafter having approached the ACB and lodging of complaint. This apart, the evidence of the complainant is fully corroborated by his complaint and the question of initial demand also stands established. The contention that the licence was with the driver and not in the portfolio handed over to the appellant-accused (PSI) is neither here nor there as it is quite possible that the licence may have remained with the driver, however, this minor contradiction cannot go to the root of the matter. Similarly, the contention that the date 12-12-1990 mentioned in the chit for contract of hiring

luxury bus is wrong cannot be accepted as it is quite probable that the chit may have been prepared on the previous day. The stand taken by the learned Counsel for the appellant that Ramjibhai, passengers in the luxury bus and PSO of Khuntvada Police Station have not been examined bears no significance as there is ample evidence on record in the form of evidence of complainant, Panchas, Investigating Officer, Panchnama, FIR etc. The contention that there was no reason for the complainant to come to the staircase after the acceptance of the amount by the appellant-accused does not stand to good reasoning as the complainant wanted to make sure that all the members of the raiding party could see the signal made by him. The submission that Panch no.1 could not see anything or hear the conversation between the complainant and the appellant-accused from the place where he was standing does not merit acceptance as the evidence on record shows that Panch no.1 was at a distance of only 3 to 4 ft. from the Chamber of the appellant-accused. Moreover, Panch no.1 in his evidence has clearly denied the suggestion that he could not hear and see anything that happens in the Chamber of the PSI from the place where he was positioned. Though

there was a wireless set on at a distance of 2ft. from Panch no.1 the possibilty of hearing would depend upon the hearing capacity of the person concerned, and admittedly, no evidence is led on this count or even to the effect that Panch no.1 is an interested witness. The Panchas and the complainant were not known to one another but were introduced to one another at the ACB Office. This witness has been cross-examined but by and large his evidence is not found to be contradictory with the evidence of the complainant the FIR and the Panchnama. Panch no.1 in his evidence has also stated that the currency notes were taken from the hands of the PSI by him when he had come to the outer room from his Chamber. Absence of anthracene powder marks on the cupboard torch etc. are too trifle in nature as powder marks will be present only on the articles touched by the appellant-accused. From the evidence of the complainant which finds corroboration in all material aspects from the evidence of Panchas and Investigating Officer it is clear that the raiding party reached Khuntvada Police Station at 6.00 p.m. on 12-12-90 and all the formalities of raid were completed by 10.30 p.m.and thereafter they went to Mahuva or Bhavnagar. The fact that

the currency notes as also the trouser of the appellant-accused having been not sealed by itself cannot be considered as fatal to the case of the prosoecution. There is a positive statement in the evidence of the complainant that he was instructed by ACB Inspector Mr. Bhatt to handover the currency notes to the PSI (appellant-accused) on demand. The submission that there was no light at Khuntvada Police Station at the relevant time is not acceptable in view of the fact that there is evidence of complainant which shows that upon the arrival of the PSI to Khuntvada Police Station the electric supply was restored since the lights were not there only till the time when the PSI reached the Police Station and not beyond that. In the present case we also find that the trap has been executed in a legal and proper manner. The complainant as well as Panch witness have said that they were explained the characteristics of anthracene powder and ultra violet lamp by the ACB Inspector and therefore, the experiment is also acceptable. Speaking about the so called contradictions in the evidence, one cannot lose sight of the fact that incident is of the year 1990 and a few immaterial contradictions here or there cannot be fatal to the case of the prosecution.

17. Thus, it is found that there was sufficient evidence on the record of the trial Court to hold that the appellant did demand and accept the bribe money from the complainant. Even if this money was planted in the pocket of the appellant accused, the presence of anthracene powder on the hands of the appellant-accused could not have been explained. The burden is on the appellant-accused to prove that the money in question received by him is not by way of illegal gratification. It is also not the case of the prosecution that the luxury bus was run without proper licence, permit and other papers. The trial Court, as discussed above, has given cogent and convincing reasons for accepting prosecution evidence. In my opinion also, this evidence inspires confidence. The learned Counsel for the appellant-accused could not point out even a single reason which would enable this Court to agree with the defence that the appellant was falsely implicated in the case as the Police Department filed cases against the driver of the bus owned by son of the M.L.A. as the bus was being plied without permit and to pressurize the police a false trap has been laid. Once the prosecution evidence is found to be acceptable and reliable and once it is found that it inspires

confidence, then there is no option for this Court but to dismiss the appeal and to confirm the judgment and conviction order of the trial Court. I am fortified in my view by the judgment rendered in the case of (1) M.Narsinga Rao v. State of Andhra Pradesh reported in 2001(1) Crimes 79 (SC) relevant paras 12 and 13, (2) State of M.P. v. Shambu Dayal Nagar reported in (2006) 8 SCC 693 relevant para 28 and (3)StateCF A.P. v. Kommaraju Gopala Krishna Murthy reported in (2000) 9SCC 752.

18. For the foregoing reasons, the appeal is meritless and deserves to be dismissed. This appeal is accordingly dismissed and the judgment and order of conviction and sentence recorded in Special Case no.9 of 1991 dated 5-11-1993 by the learned Special Judge, Bhavnagar are hereby confirmed. The appellant-accused is on bail. He shall surrender to the custody within two weeks from the date of receipt of the writ of this judgment. His bail bonds are cancelled.

(M.D.Shah,J.)

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